

PUBLIC HEARING DRAFT 5/03

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 182

EVICTIION - PRACTICE AND PROCEDURE

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Historical note: Chapter 15-182, Hawaii Administrative Rules, is based substantially upon Chapter 17-501, Hawaii Administrative Rules. [Eff 1/1/81; am and comp 5/26/98; R 10/25/99; am and comp]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-182-1 Purpose. These rules shall govern the practice and procedure for terminating the tenancy of persons using or occupying any unit in a project owned or operated by the housing and community development corporation of Hawaii except for rental housing projects governed by chapter 15-173. These rules afford tenants an opportunity for a hearing if a tenant disputes any action by the corporation to evict the tenant from the tenant's unit. These rules shall

be liberally interpreted to ensure that the rights of the parties are observed in a just and speedy determination of every hearing. [Eff 10/25/99; comp] (Auth: HRS §201G-5) (Imp: HRS §201G)

§15-182-2 Definitions. As used in these rules, except otherwise required by context:

"Agreement" means any lease, rental agreement, permit, or license covering the use and occupation of any unit or other premises owned or controlled by the corporation.

"Corporation" means the housing and community development corporation of Hawaii.

"Document" means written decisions, orders, and notices issued for the purposes of this chapter.

"Examiner" means a trial examiner, ~~[or the]~~ hearing board or eviction board appointed by the corporation for the purposes of chapter 201G, HRS.

"Grievance hearing" means the hearing prescribed in the grievance procedure set forth in rules of the corporation.

"Hearing" means a quasi-judicial proceeding in which the corporation prepares to terminate an agreement.

"Hearings clerk" means the person responsible for receiving, recording, and preserving the records of the examiner.

"Hearings officer" means the person representing the corporation in a hearing.

"Party" means a person or agency as defined in section 201G-51, HRS.

"Presiding officer" means the trial examiner, ~~[or]~~ a member of the hearing board, or a member of the eviction board duly elected by a majority of the board members to serve as its chairman.

"Project manager" means the corporation's representative assigned to manage projects in a management area or any other employee of the corporation specifically designated by position description.

"Tenant" means a person who is subject to eviction proceedings under this chapter. [Eff 10/25/99; am and comp] (Auth: HRS §§201G-59, 92-6) (Imp: HRS §201G-53)

§15-182-3 Examiner. (a) Communications to the examiner may be mailed or delivered to the corporation's office in the respective county in care of the hearings clerk.

(b) When the examiner is a hearing board, or an eviction board, a quorum of members shall be present to validate any action taken.

(c) No employee of the corporation shall be an examiner, unless specifically designated by the corporation.

(d) All documents issued by the examiner may be executed by facsimile signature. [Eff 10/25/99; am and comp] (Auth: HRS §§201G-59, 92-15) (Imp: HRS §201G-53)

§15-182-4 Process service. (a) All documents issued for the purposes of this chapter ~~may~~ shall be served either:

- (1) Personally to the tenant or adult household member by a law enforcement officer of the State or county, or an officer appointed by the corporation; or
 - (2) By certified mail return receipt requested; or
 - (3) If personal service or service by certified mail cannot be effectuated, the document or documents may be served:
 - (i) By posting the document or documents on the unit occupied by the tenant and by first class mail; or
 - (ii) By publication in a newspaper of general circulation and by first class mail.
- (b) Service upon a party shall be complete if:

- (1) The party or the party's attorney is personally served;
- (2) The document or documents are posted on the unit occupied by the tenant and mailed to the party's last known address by first-class mail;
- (3) The party signs the receipt for certified mail;
- (4) Upon publication in a newspaper of general circulation; or
- (5) By special order of the examiner, a document is posted on the unit occupied by the party. [Eff 10/25/99; comp _____] (Auth: HRS §§201G-59) (Imp: HRS §201G-53)

SUBCHAPTER 2

PRE-HEARING PROCEDURE

§15-182-11 Notice of cause for cases referred for eviction prior to June 28, 2002. (a) Any violation under section 201G-52, HRS, shall constitute cause for the project managers within each county to initiate eviction proceedings. The tenant shall be notified in writing and the document shall state the reason for and the date of the proposed termination of the agreement. The document shall also inform the tenant of the tenant's rights to reply to the corporation's staff and to request a grievance hearing.

(b) The tenant shall be notified in accordance with the terms of the agreement.

(c) If the tenant fails to respond within the time period prescribed by the notice of proposed termination, the project manager shall submit a written request to the examiner that the tenant be evicted. [Eff 10/25/99; am and comp _____] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§15-182-12 Notice of cause for cases referred for eviction on or after June 28, 2002. (a) Any violation under section 201G-52, HRS, shall constitute cause for the project managers within each county to initiate eviction proceedings. The tenant shall be notified in writing and the document shall state the reason for and the date of the proposed termination of the agreement. The document shall also inform the tenant of the tenant's rights to reply to the corporation's staff and to request a grievance hearing.

(b) The tenant shall be notified in accordance with the terms of the agreement.

(c) If the tenant fails to respond within the time period prescribed by the notice of proposed termination, the project manager shall submit a written request to the examiner that the tenant be evicted.

(d) If the violation is for delinquent payment in rent, the corporation shall schedule a meeting with the tenant to discuss the delinquency. If the tenant appears at the meeting, the corporation will consider whether tenant's situation is appropriate for a reasonable payment plan. The corporation or its agent may consider but is not limited to considering the following factors to determine whether tenant's situation is appropriate for a reasonable payment plan:

- (1) Amount of the delinquent balance;
- (2) Amount of tenant's monthly rent charge;
- (3) Tenant's household income;
- (4) Other sources of income of the tenant;
- (5) History of rent payment by the tenant;
- (6) History of other violations of the rental agreement by the tenant;
- (7) Cause of the delinquency; and
- (8) Mitigating factors.

(e) The corporation or its agent may consider, but is not limited to considering, the following factors to determine if the payment plan is reasonable:

- (1) Tenant's household income;

- (2) Other sources of income of the tenant;
- (3) Other debts of the tenant;
- (4) Whether the tenant can clear the delinquent balance within 6 months; and
- (5) Hardship on the tenant.

(f) If the corporation or its agent determines that the tenant will be unable to clear the delinquent balance within a 6-month period, the tenant's situation is not appropriate for a reasonable payment plan. A reasonable payment plan shall not exceed a period of 6 months.

(g) If the corporation or its agent determines that the tenant's situation is appropriate for a reasonable payment plan, one will be offered as agreed upon between the corporation or its agent and the tenant. In the event the tenant breaches the reasonable payment plan, the corporation or its agent shall proceed to terminate the tenant's tenancy by referring the matter to the hearings office to schedule a hearing before the eviction board. [Eff 10/25/99; am and comp] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§15-182-~~[11]~~13 Notice of hearing. Notice of hearing shall meet the requirements of chapter 201G, HRS. [Eff 10/25/99; am and comp] (Auth: HRS §201G-59) (Imp: HRS §201G-53)

§15-182-~~[13]~~14 Request for subpoenas. (a) Only an examiner or parties to the hearing may request the issuance of a subpoena, provided that subsection (b) shall be complied with. The examiner or the examiner's designated representative shall issue the subpoena.

(b) The request for issuance of a subpoena of a witness shall be in writing and shall state the name and address of the desired witness and the reasons why the testimony of the witness is material and relevant to the issues in the hearing. The party requesting the subpoena shall pay to the witness the same fees

and mileage as prescribed in chapter 607, HRS. The request for issuance of a subpoena duces tecum for documents and records shall be in writing. The request shall specify the particular document or record, or part thereof sought, and shall state the reasons why the document or record is material and relevant to the issues of the hearing. [Eff 10/25/99; comp] (Auth: HRS §§201G-59, 607-12, 92-16) (Imp: HRS §201G-53)

SUBCHAPTER 3

HEARING PROCEDURE

A. Conditions

§15-182-21 Counsel. (a) Unless otherwise directed by the presiding officer, one counsel for each party represented shall be permitted to conduct direct and cross examination of a witness, state and argue an objection or motion, and make opening or closing argument.

(b) A tenant may appear in the tenant's own behalf or with another person as the tenant may authorize. [Eff 10/25/99; comp] (Auth: HRS §§201G-59) (Imp: HRS §201G-53)

§15-182-22 Motions. (a) All motions shall state the grounds and shall set forth the relief or order sought. Motions need not be in writing.

(b) All motions shall be presented to the examiner at the commencement of the hearing. If a written motion is presented, a copy shall be provided to the opposing party.

(c) The opposing party may state opposition to any motion presented to the examiner.

(d) The examiner may consider all motions and opposing motions in executive session and shall rule on each motion when appropriate. [Eff 10/25/99; comp]

] (Auth: HRS §§201G-59) (Imp: HRS §201G-53)

§15-182-23 Waiver of procedure. Upon agreement of the parties, any procedure in a hearing may be modified or waived and informal disposition may be made of any case by agreed settlement, consent order, or default. [Eff 10/25/99; comp]
(Auth: HRS §§201G-59) (Imp: HRS §201G-53)

§15-182-24 Records. (a) The hearings clerk shall keep written summaries of all hearings. Neither a full transcript nor recording of the hearing shall be required.

(b) All records of a hearing shall be confidential and released only at the direction of the examiner or by judicial order. [Eff 10/25/99; comp] (Auth: HRS §§201G-59, 92-9, 92-6) (Imp: HRS §201G-53)

B. Hearings

§15-182-31 Hearings. (a) In all hearings a presiding officer shall preside. The vice-chairman of a hearing board or an eviction board shall preside at a hearing in the absence of the presiding officer.

(b) The presiding officer shall determine the order of appearance of the parties to a hearing and shall administer the oath to all witnesses as prescribed by section 621-12, HRS. The presiding officer may limit the time of each witness giving testimony upon a particular issue.

(c) Hearings shall be conducted in an informal manner unless otherwise required by law.

(d) The examiner may remove any person who disrupts a hearing.

(e) If a tenant is removed for disruptive conduct, the hearing may continue and a determination made based upon the available evidence and testimony presented.

(f) All hearings shall be confidential and closed to the public unless the tenant agrees otherwise. [Eff 10/25/99; am and comp](Auth: HRS §201G-59, 92-6, 92-16) (Imp: HRS §201G-53)

§15-182-32 Default. A tenant who fails to appear at a hearing after being duly notified may be found in default and the examiner may proceed with the hearing. [Eff 10/25/99; comp]
(Auth: §201G-59) (Imp: HRS §201G-53)

§15-182-33 Curable and Non-Curable Violations.

(a) The examiner shall determine whether or not the violation of the rental agreement is curable by the tenant. A violation shall be curable only in cases where the violation is for non-payment of a delinquent balance owing to the corporation. The violation for non-payment of a delinquent balance owing to the corporation shall be curable if:

- (1) There has been no prior finding of a violation of the rental agreement for non-payment of rent, failure to pay rent when due and chronic delinquency, against the tenant;
- (2) There is no concurrent finding of another violation of the rental agreement against the tenant; and
- (3) Tenant pays the delinquent balance in full within the 10-day cure period.

(b) All other violations of the rental agreement are deemed non-curable. [Eff 10/25/99; am and comp] (Auth: HRS §201G-59) (Imp:

HRS §201G-55)

SUBCHAPTER 4

APPEALS

§15-182-41 Appeals of contested case hearings referred for eviction prior to June 28, 2002. (a) An appeal of the decision of the examiner may be taken to the corporation as provided in section 201G-54, HRS. The appeal shall be in writing and may be mailed or delivered to the corporation's office at 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813, in care of the hearings clerk. The appeal may be heard and decided by the corporation or an appeals board appointed by the corporation.

(b) The corporation shall give written notice of the appeal hearing to the tenant fixing the date, time, and place of the appeal hearing. The notice shall be given at least five days before the date set for the appeal hearing.

(c) A tenant who fails to appear at an appeals hearing after being duly notified may be found in default and the corporation may proceed with the hearing.

(d) The corporation's decision shall be based solely on the record of the examiners which may be orally summarized by the hearings officer.

(e) Any person aggrieved by the final decision and order of the corporation may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section 201G-57, HRS. [Eff 10/25/99; am and comp]
Auth: HRS: §§201G-54, 201G-59) (Imp: HRS §201G-53)

§15-182-42 Appeals of contested case hearings referred for eviction on or after June 28, 2002. (a) Any person aggrieved by the final decision and order of the examiner may institute proceedings for review in the circuit court within thirty days after receipt of the decision as provided in section 201G-57, HRS.

[Eff 10/25/99; am and comp] (Auth:
§201G-59) (Imp: HRS §201G-53)

SUBCHAPTER 5

MISCELLANEOUS PROVISIONS

§15-182-51 Severability. If any part, section, sentence, clause, or phrase of these rules or its application to any person or circumstance is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases or application of these rules to other persons or circumstances shall not be affected. [Eff 10/25/99; comp] (Auth: §201G-59)
(Imp: HRS §201G-53)

§15-182-52 Number. The use of all words used in the singular shall extend to and include the plural. [Eff 10/25/99; comp] (Auth: §201G-59)
(Imp: HRS §201G-53)

§15-182-53 Termination of rental agreement based on Public Law 104-120. The corporation may also terminate a rental agreement as provided for in section 15-190-~~[48]~~ 59. [Eff 10/25/99; am and comp] (Auth: 42 USC §1437d; Pub. L. 104-120; §201G-59)
(Imp: HRS §201G-53)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

The amendments to and compilation of chapter 182,
title 15, Hawaii Administrative Rules, on the Summary
Page dated _____, 2003 were adopted on
_____, 2003 following public hearings held on
May 12, 2003, after public notice was given in The
Honolulu Star Bulletin, Hawaii Tribune Herald, West
Hawaii Today, The Garden Isle, and The Maui Times on
_____, 2003.

They shall take effect ten days after filing with
the Office of the Lieutenant Governor.

CHARLES A. STED, Chairperson
Board of Directors
Housing and Community
Development Corporation of
Hawaii

APPROVED AS TO FORM:

Deputy Attorney General

LINDA LINGLE
Governor
State of Hawaii

Date:

File

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Amendment and Compilation of Chapter 15-182
Hawaii Administrative Rules

_____, 2003

SUMMARY

1. §§15-182-11 and 15-182-12 are amended
2. A new §15-182-33 is added.
3. §15-182-41 is amended.
4. A new §15-182-42 is added.
5. Chapter 15-182 is compiled.